

EX PARTE OR LATE FILED

February 13, 2003

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Federal Communications Commission
Office of the Secretary

Honorable Michael K. Powell, Chairman
 Honorable Kathleen Abernathy, Commissioner
 Honorable Michael Copps, Commissioner
 Honorable Kevin Martin, Commissioner
 Honorable Jonathan Adelstein, Commissioner
 Federal Communications Commission
 445 12th Street SW
 Washington, DC 20554

Re: ***Ex Parte***
CC Docket Nos. 01-338, 96-98, and 98-147

~~Dear~~ Chairman Powell and Commissioners:

I, the undersigned chief executive officer of a competitive provider of local telecommunications services, have reviewed the network element unbundling principles and standards set forth by the National Association of Regulatory Utility Commissioners ("NARUC") in their February 6, 2003 letter¹ titled in this proceeding.¹ I am willing to express my full and unequivocal support for the NARUC framework.

Our industry has invested billions of dollars in infrastructure, and have led the way in deploying innovative local telecommunications services to millions of consumers throughout the United States. Our business plans have been developed in reliance upon the twin promises of the 1996 Telecommunications Act and state and federal unbundling rules. I believe that the NARUC framework would allow our industry a fair and reasonable chance to continue to provide competitive offerings to the millions of residences and small businesses consumers that have come to rely upon them. By adopting the NARUC framework, the Commission can achieve its complementary objectives of establishing a pro-competitive deregulatory unbundling framework and creating an unbundling regime that complies with the D.C. Circuit's decision in *USTA*,² which demands that the Commission's unbundling rules be the result of a fact-specific inquiry.

The NARUC framework calls for the Commission to promulgate the baseline Section 251 impairment test applicable to all elements. State commissions, in turn, will be charged with applying the Commission's impairment standard to all elements, and must remove from the list

¹ See Letter from David Svanda, NARUC President and Michigan Commissioner, et al. to Chairman Powell (Feb. 6, 2003).

² *USTA v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("*USTA*").

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those UNEs where it is demonstrated that **no impairment** exists. By properly placing the fact-finding and decision-making **burdens upon** state commissions, the NARUC framework allows the Commission to respond appropriately to both the Court of Appeals in **USTA**, and the Supreme Court's decision in **Verizon**.³ Those decisions require that ~~the~~ Commission adopt **an** impairment standard that **allows for detailed, fact-based application of the impairment factors** rather **than** a uniform national rule that applies in every geographic market and customer class. The NARUC framework allows state commissions to assess impairment **on** a market-by-market basis, and tailor ~~the~~ availability of specific network elements—or **any** necessary transition process—where the state commission **finds** that market conditions dictate that an element should be removed. Accordingly, the regime contemplated by NARUC ensures that competitive conditions ~~most~~ conducive to continued facilities investment and vibrant competition **are** fostered.

At bottom, the NARUC framework will promote the continued growth and expansion of local competition by ensuring that innovative services are available to all **consumers**—including mass-market residential and small business **customers**—throughout the country. Any **plan** that would adopt a “one size fits all” national unbundling regime would **not** only be contrary to the requirements of **USTA**, but would effectively unhinge **the** efforts of entrepreneurs and innovators in the competitive telecom sector.

Accordingly, we respectfully urge you to adopt the compromise framework submitted by NARUC on February 6.

Sincerely,